

UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF ALABAMA

Donna Dorsey Davis,  
as an individual and derivatively upon behalf  
of I-65 Properties, Inc.

Plaintiff,

VS.

CIVIL ACTION NO: 2:06cv766

Richard M. Dorsey, as an individual,  
and CD& O, LLC, as a necessary party,

Defendant.

and

Richard M. Dorsey,  
Dorsey Motor Sales, Inc.,  
and TD & O, Inc.,

Counter Plaintiffs,

VS.

Donna Dorsey Davis,

Counter Defendant.

**Plaintiff/Counter-Defendant's Reply to Defendants/Counter-Plaintiffs' Motion to Strike Summary Judgment**

Comes now Plaintiff/Counter-Defendant, Donna Dorsey Davis, individually and derivatively, in the above-styled cause, and submit the following Reply to Defendants/Counter-Plaintiffs' Motion to Strike Summary Judgment and in support thereof states as follows:

1. On August 25, 2006, the Plaintiff filed a Stock Holder Derivative Suit in which Defendant, Richard M. Dorsey is the majority stockholder, and the Plaintiff, his sister, Donna Dorsey Davis, is the minority stockholder. With the brother and sister being the only stockholders of I-65 Properties, Inc., it is considered a closely held corporation.

2. On November 2, 2006, this Court entered a Scheduling Order setting the deadline for dispositive motions as ninety days prior to the pre-trial hearing, which is set for June 15, 2007. The dispositive motion deadline was therefore March 19, 2007.

2. On January 5, 2007, February 1, 2007, and February 7, 2007, Plaintiff's counsel attempted to schedule depositions with counsel for Defendant to no avail.

3. On February 8, 2007, approximately one hundred forty-five days (145) beyond the twenty days prescribed by Rule 8 of the Fed. R. Civ. Proc., Defendant filed an answer to the Complaint which included a Counter-Claim against Plaintiff.

4. On February 28, 2007, Plaintiff noticed the deposition of the Defendant which occurred on March 12, 2007.

5. On March 19, 2007, Defendant filed his Motion for Summary Judgment. On April 9, 2007, Plaintiff filed her response thereto, and in the alternative, a Cross Motion for Summary Judgment.

6. On April 11, 2007, this Court entered an Order requiring the Defendants to file a response to Plaintiff's Motion by April 11, 2007.

7. The Pretrial Conference is set for June 15, 2007, and the trial on the matter has been set for July 23, 2007. The Court denying the Defendant's Motion to Strike the

Plaintiff's Motion for Summary Judgment will in no way have an effect on the parties being prepared to move forward on the above Ordered dates.

8. In light of the fact that the Defendant improperly filed an Answer and Counter-Claim on February 8, 2007, leaving the Plaintiff only a small amount of time in which to complete discovery and formulate a reply, the Plaintiff's Motion for Summary Judgment on Defendants' Counter-claims will not be prejudicial to any party by being filed out of time, but as reasonably filed contemporaneously in a response to Defendant's Motion for Summary Judgment.

9. This Court has properly given the Defendants the relief requested in the Motion to Strike by Ordering any and all responses to Plaintiff's Motion for Summary Judgment on Defendants' Counter-claims due on April 27, 2007.

10. According to Fed. R. Civ. P. 12(f), the "court **may** order stricken from any pleading any **insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.**" The essence of the Plaintiff's Motion for Summary Judgment is based on the Defendant, Richard M. Dorsey, cross-claiming against his sister for a debt that is not associated with her individually and is barred from recovery. For there to be justice to prevail, not only is the substance of the Motion for Summary Judgment a sufficient defense, but is very material to this matter before the Court.

WHEREFORE, PREMISES CONSIDERED, and in the interest of justice, Plaintiff prays this honorable Court will Deny Defendants' Motion to Strike, and furthermore, Grant her leave of Court to file her Motion for Summary Judgment out of time, and any further and different relief this Court may deem necessary and proper.

RESPECTFULLY SUBMITTED,

By: s/Lindsay B. Erwin  
Lindsay B. Erwin (ERW005)  
ASB-5299-y59e

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 27<sup>th</sup> day of April, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and have served a copy of same electronically and placing a copy of same in the United States Mail, postage prepaid and properly addressed to:

Clifford W. Cleveland  
Post Office Box 680689  
Prattville, Alabama 36068

James E. Roberts  
4908 Cahaba River Road, Suite 204  
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s/Lindsay B. Erwin  
Of Counsel